

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

CORY B. LANGE,)	
) Cause No.	
Plaintiff,) 4:20-cv-0160-TWP-KMB	
) Indianapolis, Indiana	
vs.) August 27, 2024	
) 1:14 p.m.	
ANCHOR GLASS CONTAINER)	
CORPORATION,)	
)	<u>VOLUME I</u>
Defendant.)	

**Before the Honorable
TANYA WALTON PRATT**

OFFICIAL REPORTER'S TRANSCRIPT OF
JURY TRIAL

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Court Reporter: David W. Moxley, RMR, CRR, CMRS
United States District Court
46 East Ohio Street, Room 340
Indianapolis, Indiana 46204

PROCEEDINGS TAKEN BY MACHINE SHORTHAND
TRANSCRIPT CREATED BY COMPUTER-AIDED TRANSCRIPTION

I N D E X

Opening statement by Mr. Imm37

Opening statement by Mr. Murray54

1 (In open court.)

2 THE COURT: You may be seated. Good afternoon. We
3 are on the record. This is Cory B. Lange versus Anchor Glass
4 Container Corporation, and we are scheduled to begin our jury
5 trial this afternoon. And, so, lawyers, what we're going to do
6 right now is handle the objections that were filed over the
7 weekend and, I guess, yesterday.

8 Let's begin by having counsel state your names for the
9 record, and I notice -- is your client here?

10 MR. IMM: My client is on his way, Your Honor. I'm
11 sorry. The only time we saw in the Court's order was 1:30. He
12 should be here momentarily --

13 THE COURT: Okay.

14 MR. IMM: -- but he will be here.

15 THE COURT: Okay. All right. Let's state your names
16 for the record, beginning with Plaintiff's counsel.

17 MR. IMM: Stephen Imm on behalf of Cory Lange, Your
18 Honor.

19 MS. EMERSON: Diana Emerson on behalf of Cory --

20 THE REPORTER: I can't hear.

21 THE COURT: We can't hear you.

22 MS. EMERSON: Diana Emerson --

23 THE COURT: You have to cut your microphone on.

24 MS. EMERSON: Diana Emerson for Cory Lange.

25 THE COURT: Okay. Does she have a mic?

1 MS. EMERSON: Yes. Yes, Your Honor.

2 THE COURT: All right.

3 All right. And at our Defendant's table?

4 MR. MURRAY: Good afternoon, Your Honor. Chris Murray
5 on behalf of Defendant.

6 THE COURT: Mr. Murray.

7 MS. PACTOR: Ellen Pactor on behalf of Defendant.

8 THE COURT: Okay.

9 MR. HIJAB: And I'm Sam Hijab, H-I-J-A-B, with Anchor
10 Glass Container Corporation.

11 THE COURT: You're counsel, also?

12 MR. HIJAB: Internal counsel.

13 THE COURT: Okay. All right, lawyers, so let's talk
14 about the Defendant's limited objections to the Court's
15 preliminary jury instructions, because we're going to read
16 those today. That's at Docket 186, and Defendant counsel, you
17 object to preliminary instruction number 7. That's the
18 instruction that states, as the Court has it: "You should not
19 be influenced by any person's race, color, religion, national
20 ancestry, or sex." What's your objection to that, counsel?

21 MR. MURRAY: Yes, Your Honor. Only that -- I guess
22 two things, Your Honor. It's not part of the standard
23 objection unless there's a specific reason for including it,
24 but that's not necessarily an issue. But more just in the --
25 because this is a race discrimination case, the possibility

1 that it could be confusing to the jury, because at some point
2 there may be some testimony from witnesses about somebody was
3 this race or that race, and we wouldn't want the jury to infer
4 that they were doing something improper by referencing
5 someone's race throughout the case, Your Honor.

6 We had suggested some alternative proposed language
7 that they just don't consider race in applying the law to the
8 facts or in deciding the facts, but that's our suggestion, Your
9 Honor. Thank you.

10 THE COURT: What's your position, counsel?

11 MR. IMM: Candidly, Your Honor, I don't understand the
12 objection --

13 THE REPORTER: I'm sorry. Do you have your microphone
14 on?

15 MR. IMM: Are we supposed to have lapel mics?

16 THE REPORTER: Yes.

17 THE COURT: Yes. You need to wear your lapel mics.

18 MR. IMM: I'm sorry.

19 THE COURT: And the court reporter's preference is
20 that even when you're speaking in a stationary mic, and at the
21 lectern, that you also wear your lapel mics, because we all
22 want an excellent record, and we want to make sure he hears
23 every single word.

24 MR. IMM: Is this good? Is this mic working?

25 THE COURT: It's working.

1 MR. IMM: Okay. Great.

2 I was saying, Your Honor, I don't really understand
3 Defendant's objection. It's certainly -- instruction number 7
4 sounds like a correct statement of law to me, so I don't think
5 the objection is well-taken.

6 THE COURT: I think his objection is, is he saying
7 that -- the committee comments say that the bracketed material
8 should not be given unless a party has a legitimate concern
9 about the possibility of influence by one or more of these
10 factors, and I believe in a race case, these are factors. And
11 personally, I give it in every single trial, because we don't
12 want, ever want a juror to consider anything inappropriate such
13 as a person's race, religion, national ancestry, or their sex.

14 So I'm going to give the pattern with that included,
15 and do you have any objection to Defendant's counsel wants to
16 add -- what's the language you want to add?

17 MR. MURRAY: Yes, Your Honor. I think my recollection
18 is just adding that -- well, that particular instruction, I
19 think, is about informing the jury that they're responsible for
20 deciding the facts. So we would just suggest adding the phrase
21 should not consider those factors in deciding the facts or
22 applying -- or deciding the facts, I think. I'm going from
23 memory, Your Honor, so I'm sorry.

24 THE COURT: Yes. You have in deciding -- you want to
25 say, you should not be influenced by any person's race, color,

1 religion, national ancestry, sex -- or sex in deciding the
2 facts or in applying the law to these facts. I don't know if
3 that's a correct statement of the law.

4 MR. IMM: I don't either, Your Honor. I think in a
5 race discrimination case, the parties are going to have to
6 consider -- those jurors are going to have to consider race.

7 THE COURT: Race. And what this instruction is saying
8 is to not -- perform these duties fairly and impartially, to
9 just not unfairly or impartially consider those factors. So
10 over Defendant's objection, I'm going to give the pattern,
11 including the bracketed section about race and gender.

12 All right. And then your other objection is to
13 instruction number 8, and this is the direct and circumstantial
14 evidence. And you just want me to give the full pattern
15 instead of this abbreviated version?

16 MR. MURRAY: Yes, Your Honor. That would be our
17 request. Thank you.

18 THE COURT: Do you have any objection about that,
19 Mr. Imm?

20 MR. IMM: No, Your Honor.

21 THE COURT: All right. So we'll give the pattern.
22 Okay. All right. Anything else that we need to talk about?
23 The jury will be here in about 10 minutes. Anything else
24 before we bring in the panel, from the Plaintiff? You've just
25 got to get your client here. You've talked to him, and he is

1 on his way?

2 MR. IMM: Yes.

3 THE COURT: Okay.

4 MR. IMM: I spoke to him just moments ago, Your Honor.

5 THE COURT: Okay.

6 MR. IMM: But inasmuch as opening statements may want
7 to reference some of these individuals that are subject to the
8 pending motions in limine, I was wondering if the Court was in
9 a position to make any rulings on those.

10 THE COURT: I will be before we do opening; okay?

11 MR. IMM: Very well. Thank you, Your Honor.

12 THE COURT: So I have a draft. I've just got to
13 review it before I issue it; okay?

14 MR. IMM: Thank you, Judge.

15 THE COURT: All right. Anything else from the
16 Defendants?

17 MR. MURRAY: Not from the Defendant.

18 THE COURT: So what we'll do, lawyers, we'll select
19 our jury, and then we'll take a break. And I'll get you the
20 rulings on those motions in limine, and then I will read the --
21 I read the preliminary instructions first. And then you guys
22 will make your opening statements, and then we'll be able to
23 come back tomorrow and start straight with evidence. And that
24 way we can ensure that we're finished by Friday.

25 MR. MURRAY: Thank you, Your Honor.

1 THE COURT: Okay. All right. Is this your client?

2 MR. IMM: Yes, Your Honor. Yes.

3 THE COURT: Okay.

4 MR. IMM: Cory, come on up.

5 THE COURT: All right, lawyers. We'll take a recess
6 for ten minutes, and the panel should arrive by that time.

7 MR. MURRAY: Thank you, Your Honor.

8 THE COURT: Okay. We'll see you in a few minutes.

9 COURTROOM DEPUTY: All rise.

10 (Recess at 1:22, until 1:46.)

11 THE COURT: You may be seated. Good afternoon,
12 everyone. My name is Tanya Walton Pratt, and I am the chief
13 judge of the United States District Court for the Southern
14 District of Indiana. And you all are here this afternoon
15 because we're going to select a jury for a trial that's going
16 to actually begin the evidence tomorrow, but we wanted to make
17 sure we had our trial finished before the Labor Day weekend, so
18 we're starting with our jury selection this afternoon. And I
19 will be the judge presiding over the trial.

20 I want to begin by thanking all of you, those of you
21 in the box and in the audience for being here today and
22 responding to your summons. We all know that it is a sacrifice
23 for you to come in and perform your jury duty, and it's a
24 financial sacrifice, and certainly it's one of your time, so I
25 want to thank all of you for being very good citizens and

1 reporting this afternoon.

2 In just a moment all of you will be asked to take an
3 oath or affirmation that your answers this afternoon will be
4 truthful. Thereafter, I will ask a number of questions
5 addressed to all of you as a group. If you desire to answer
6 yes to any of these questions, you should raise your paddle at
7 the time that the question is asked, and after I have
8 questioned you, the attorneys will have a brief opportunity to
9 ask some supplemental questions.

10 Ladies and Gentlemen, these questions are not intended
11 in any way to be personal, prying, or offensive, but rather
12 they're necessary to ensure that a panel of fair and impartial
13 persons for this particular matter can be selected. If any of
14 you had prior knowledge of any of the parties in this case or
15 had any biases to one of the issues in the case, you would
16 understand that you may not be the proper person to serve on
17 this particular jury.

18 So I need all of you, all my prospective venire
19 persons to please stand, out in the audience and in the box,
20 and raise your right hands. I'm going to ask you to take an
21 oath or affirmation that your answers this afternoon will be
22 truthful.

23 (The prospective jurors are sworn.)

24 THE COURT: You may be seated.

25 All right, Ladies and Gentlemen, everybody take a deep

1 breath because you look nervous. Just take a deep breath, and
2 I promise you, people who have served on a jury always in the
3 end, they say it's a very rewarding experience. So you guys
4 are going to have a very rewarding experience.

5 The matter that's going to be tried is a civil case as
6 opposed to a criminal case, and it is entitled Cory B. Lange,
7 Plaintiff, versus Anchor Glass Container Corporation, the
8 Defendant. Throughout the trial proceedings, the parties will
9 likely refer to the Plaintiff, Cory Lange, as either the
10 Plaintiff or Mr. Lange. And we will likely refer to the
11 Defendant, Anchor Glass Container Corporation, as either Anchor
12 Glass or Anchor or the Defendant.

13 Ladies and Gentlemen, Mr. Cory B. Lange is in the
14 courtroom.

15 Mr. Lange, would you stand up so they can get a look
16 at you. And would you turn around so those in the audience can
17 see you, also?

18 Thank you. You may be seated.

19 Is anyone personally familiar with or related in any
20 way to Cory B. Lange? Does anyone know Mr. Lange? If so,
21 raise your paddle.

22 All right, very good.

23 And Anchor Glass Container Corporation is a glass
24 manufacturing company located in Lawrenceburg, Indiana. I
25 believe their corporate headquarters are in Tampa, Florida; am

1 I correct, Counsel?

2 MR. MURRAY: That's correct, Your Honor.

3 THE COURT: All right. Are any members of the panel
4 familiar with Anchor Glass Container Corporation?

5 Okay. Ladies and Gentlemen, this is a civil case, as
6 I stated, and Mr. Lange's claim is a claim for race
7 discrimination. So this is a civil rights claim, and it's
8 pursuant to a federal statute. That statute is 42 -- Title 42
9 United States Code, Section 1981. So the issue for the trial
10 will be whether Anchor Glass unlawfully discriminated against
11 Cory Lange because of his race when they failed to hire him.

12 The lawyers in this matter not only represent
13 particular parties in this case, but the lawyers are also
14 officers of this court. They have spent many, many months
15 preparing this case in order to present evidence from which a
16 jury will try to reach a unanimous verdict.

17 At this time I'm going to introduce to you the
18 attorneys involved in this case. Representing the Plaintiff,
19 Plaintiffs are attorney Stephen E. Imm, and Mr. Imm, why don't
20 you stand up and introduce the people -- your co-counsel and
21 let them know where your law firm is located.

22 MR. IMM: Thank you, Your Honor. I'm with the Finney
23 law firm. My colleague, Diana Emerson, is, as well. And we
24 practice in Cincinnati, Ohio.

25 THE COURT: Okay. Thank you.

1 All right, Ladies and Gentlemen, is anyone familiar
2 with either attorney Imm -- is it pronounced Imm?

3 MR. IMM: Actually Imm, Your Honor.

4 THE COURT: Imm. Okay. It was spelled I-M-M. I'm
5 sorry, Imm, and Attorney Emerson. Anyone familiar with either
6 of these attorneys?

7 All right. Very good.

8 And representing the Defendant, I think lead counsel
9 is Christopher C. Murray. And Mr. Murray, would you introduce
10 the persons at your table and your law firm.

11 MR. MURRAY: Sure. Good afternoon. My name is Chris
12 Murray, and I'm with a law firm called Ogletree, Deakins, and
13 we're based here. We're located here in Indianapolis, and my
14 colleague is Ellen Pactor. She's another lawyer with me at the
15 firm. Thank you.

16 THE COURT: All right. Does any member of the panel
17 have any personal knowledge or familiarity with either Attorney
18 Murray or Attorney Pactor with the law firm of Ogletree -- is
19 it still Ogletree, Deakins, Nash, Smoak & Stewart?

20 MR. MURRAY: Yes, Your Honor. That's the whole
21 mouthful.

22 THE COURT: All right. Anyone familiar with that law
23 firm or these lawyers?

24 Okay, very good.

25 All right, Ladies and Gentlemen, I'm going to

1 introduce the people that are going to be assisting me during
2 the trial. To my left is my judicial law clerk, Alex Avtgis.
3 Stand up, Alex, so they can get a good look at you. And so my
4 law clerk will be -- he will do whatever I need him to do to
5 assist me during the trial. If I need any issues researched or
6 anything of that nature, that's what Alex will take care of.
7 Thank you, Alex. You may have a seat.

8 And to my right is my courtroom deputy clerk, Sarah
9 Haltom, and Sarah serves as the official bailiff. So she's the
10 person that will bring -- she will take care of the jury during
11 the trial. She'll bring you in and take you out. She will
12 take care of any needs that any person has on the panel, and if
13 you do have a personal problem or some issues, you need to
14 deliver them to Sarah, and she will make sure that I get the
15 message.

16 Also assisting me is one of my law clerks, Carly
17 Tebelman, and that's Carly. And Carly is going to be assisting
18 by passing the microphone, because the next person I'm going to
19 introduce you to is my court reporter, David Moxley. And
20 Mr. Moxley is not able to stand up because he's doing something
21 called computer-assisted transcription. So he is actually
22 giving me a realtime transcript of everything that's said in
23 the courtroom.

24 Every word that's spoken in this court of record is
25 taken down. So whether I'm talking or the lawyers or the

1 witnesses or you guys, it is being recorded. And even though
2 Mr. Moxley is a very good court reporter, he's not perfect.

3 So when the jury is deliberating, they will not have a
4 transcript, and they will not have the assistance of a
5 transcript during their deliberations, so that's why it's very
6 important that the jury pay close attention to the evidence
7 that comes from the witness stand, and the jury will be allowed
8 to take notes, because you'll have to make decisions based on
9 your recollection of the testimony and evidence and not with
10 the aid of a transcript.

11 Ladies and Gentlemen, during the trial, witnesses will
12 be examined over here at the witness stand, and then they will
13 be cross-examined. And I'm going to read to you the names of
14 possible witnesses that may be called to testify. Those names
15 are Katie Petty -- is it pronounced Terron or Terron?

16 MR. IMM: I believe Terron, Your Honor.

17 THE COURT: Terron Gregg, Brad Lange, Travis Ross,
18 Eric Gosmeyer, Lindsay Glacken, Laura Distefano, Lisette
19 Davila, and Malcolm, also known as Mike, Whiting -- or is that
20 Whiting?

21 MR. MURRAY: Whiting, Your Honor.

22 THE COURT: Whiting. All right. So those are
23 possible witnesses that may be called to testify. And, of
24 course, the Defendant, Cory B. Lange. Does anyone know any of
25 those persons? Is anyone familiar with the names of any of the

1 possible witnesses that may be called to testify in this
2 matter? All right. Very good.

3 All right, Ladies and Gentlemen, the next phase of our
4 trial is the actual voir dire examination, where I will ask
5 specific questions to those in the box. The term "voir dire"
6 is both a Latin and a French phrase, and it means speak the
7 truth.

8 It is a very important civic duty to serve on a jury.
9 It goes along the lines of your right to vote and your duty to
10 serve in the military when called upon. As I stated earlier,
11 you are all very good citizens because you have responded to
12 your summons, and this is part of your civic duty.

13 Now that we have you in the courtroom, there are two
14 ways that you may be excused. One is through a challenge for
15 cause, and the other is through peremptory challenges. A
16 challenge for cause is if there's a legal or statutory reason
17 why you should not serve, such as age.

18 You have to be at least 18 years old. You have to be
19 able to understand the English language. You have to be a
20 resident of the Southern District of Indiana, and so those are
21 the ways you can get -- be excused for a challenge for cause.

22 And then the other way are through peremptory
23 challenges, and these peremptory challenges, each party is
24 given a certain number of strikes or challenges that they can
25 pretty much use at their discretion, and the lawyers use those

1 to help them arrive at a panel of persons, again, who can be
2 fair and impartial in this particular matter. And the lawyers
3 don't have to give a reason for the peremptory challenges, but
4 it's just so that the lawyers can feel that they have a panel
5 that will be fair.

6 The good news is that from our panel -- I believe we
7 have 22 -- is that right, Sarah?

8 COURTROOM DEPUTY: That's correct.

9 THE COURT: Twenty-two persons. We'll only be
10 selecting eight of you to serve as jurors. In a criminal
11 trial, if you have been on a criminal trial, if you've seen
12 them on television, you have to have 12 jurors.

13 In a civil trial, you have to have at least six, and
14 so we're going to have eight. And just in case somebody gets
15 sick or something happens, because, you know, there's been an
16 outbreak of COVID in the community, things happen. So we're
17 going to have a jury of eight who will have to render a
18 unanimous verdict. So they will decide the disputed issues of
19 fact.

20 This case, Ladies and Gentlemen, as I talked about
21 earlier, it's going to last no more than three and a half days.
22 We will finish no later than Friday of this week. We'll take
23 an, about an hour for lunch on the full days, and you will get
24 a break in the morning and afternoon. This is not a
25 sequestered jury, so you get to go home at night.

1 You may communicate with your employers and your
2 families and let them know that you're on jury duty, but you're
3 not allowed to tell them about what's happening in your trial.
4 And the only time you're not allowed to communicate with the
5 outside world is during deliberation. When the jury
6 deliberates, we'll take your cell phones, we'll give you a very
7 comfortable jury room with lots of snacks and keep you
8 comfortable so that you can get to the business of deliberating
9 and reaching a verdict.

10 (Voir Dire examination was recorded but is contained under
11 separate cover.)

12 (Jury in at 3:17.)

13 THE COURT: Number 35, I am going to excuse you. So
14 thank you very much for your service, also. Go that way.
15 Thank you.

16 All right, so you are the one, two, three, four, five,
17 six, seven, you're the eight jurors. Would you please stand,
18 and I'm going to get you sworn in. And raise your right hands.

19 (The jury is sworn.)

20 THE COURT: You may be seated. All right, Ladies and
21 Gentlemen, I'm going to give you your preliminary instructions
22 on the law, and then we're going to take a little break and let
23 the lawyers get set up. And they're going to give you their
24 opening statements, and then we're going to send you home. And
25 when you come back in the morning you'll begin to hear evidence

1 and testimony, and as I give these instructions, you can
2 following along on the screen or you can just sit back and
3 listen.

4 Ladies and Gentlemen of the Jury, you are now the jury
5 in this case, and I want to take a few minutes to tell you
6 about your duties as jurors and to give you some instructions.
7 At the end of the trial, I will give you more detailed
8 instructions. Those instructions will control your
9 deliberations. One of my duties is to decide all questions of
10 law and procedure.

11 From time to time during the trial, and at the end of
12 the trial, I will instruct you on the rules of law that you
13 must follow in making your decision. You should not take
14 anything I may say or do during the trial as indicating what I
15 think of the evidence or what your verdict should be.

16 The matter to be tried is a civil case. The party who
17 filed the case is called the plaintiff. In this case, the
18 Plaintiff is Cory B. Lange. The party being sued in the case
19 is called the defendant. In this case, the Defendant is the
20 Anchor Glass Container Corporation.

21 Mr. Lange, as the Plaintiff, has the burden of proving
22 his case by what is called a preponderance of the evidence.
23 Accordingly, when I say Mr. Lange must prove something by a
24 preponderance of the evidence or when I use the expression, "if
25 you find" or "if you decide," this is what I mean: When you

1 have considered all the evidence in the case, you must be
2 persuaded that it is more probably true than not true. Anchor
3 Glass has no burden to disprove Mr. Lange's claims.

4 The positions of the parties can be summarized as
5 follows: This is a civil case. Plaintiff Cory B. Lange has
6 filed a claim of discrimination on the basis of race against
7 the Defendant, Anchor Glass Container Corporation. The
8 Defendant, Anchor Glass Container Corporation, is a glass
9 manufacturing company.

10 In March 2018, Mr. Lange applied for a selector/packer
11 position at Anchor Glass Container Corporation. Anchor Glass
12 Container Corporation did not hire him. Mr. Lange claims that
13 Anchor Glass Container Corporation did not hire him because he
14 is African-American. Anchor Glass Container Corporation denies
15 Mr. Lange's claim.

16 To prove his discrimination claim, Mr. Lange will have
17 to prove, by the preponderance of the evidence, that Anchor
18 Glass Container Corporation did not hire him because of his
19 race. Again, this is a summary of the parties' positions. You
20 will be instructed on all of the elements of proving these
21 claims in your final instructions.

22 The evidence consists of the testimony of the
23 witnesses, the exhibits admitted in evidence, and any facts
24 that I may instruct you to find or the parties may agree or
25 stipulate to. A stipulation is an agreement between both sides

1 that certain facts are true. During the trial, you may hear me
2 use terms that you have heard before. I will briefly explain
3 some of the most common terms to you.

4 You may hear me refer to Cory B. Lange as Plaintiff.
5 Again, the party who filed a case is called the Plaintiff. You
6 may hear me refer to Anchor Glass Container Corporation as a
7 Defendant. Again, the party being sued is the Defendant. You
8 may hear me refer to counsel. Counsel is another way of saying
9 lawyer or attorney. I may sometimes refer to myself as the
10 Court.

11 When I say sustain an objection, I am excluding that
12 evidence from the trial for a legal reason. When you hear that
13 I have overruled an objection, I am permitting that evidence to
14 be admitted. If -- when I say admitted into evidence or
15 received into evidence, I mean that the particular statement or
16 particular exhibit may be considered by you in making the
17 decisions you must make at the end of the case.

18 You will have to decide whether the testimony of each
19 of the witnesses is truthful and accurate, in part, in whole,
20 or not at all. You also have to decide what weight, if any,
21 you give to the testimony of each witness.

22 You have two duties as a jury. Your first duty is to
23 decide the facts from the evidence in the case. This is your
24 job and yours alone. Your second duty is to apply the law that
25 I give you to the facts. You must follow these instructions

1 even if you disagree with them. Each of the instructions is
2 important, and you must follow all of them. Perform these
3 duties fairly and impartially. Do not allow sympathy,
4 prejudice, fear, or public opinion to influence you. You
5 should not be influenced by any person's race, color, religion,
6 national ancestry, or sex.

7 You have heard the phrases "direct evidence" and
8 "circumstantial evidence." Direct evidence is proof that does
9 not require an inference, such as the testimony of someone who
10 claims to have personal knowledge of a fact. Circumstantial
11 evidence is proof of a fact or a series of facts that tends to
12 show that some other fact is true.

13 As an example, direct evidence that it is raining is
14 testimony from a witness who says, "I was outside a minute ago,
15 and I saw it raining." Circumstantial evidence that it is
16 raining is when the observation of someone entering a room
17 carrying a wet umbrella. The law makes no distinction between
18 the weight to be given to either direct or circumstantial
19 evidence.

20 You should give -- you should decide how much weight
21 to give any evidence. In reaching your verdict, you should
22 consider all the evidence in the case, including the
23 circumstantial evidence, because the law does not say that one
24 is better than the other.

25 You should use your common sense in weighing the

1 evidence and consider the evidence in light of your own
2 observations in life. In our lives, we often look at one fact
3 and conclude from it that another fact exists. In law, we call
4 this inference. A jury is allowed to make reasonable
5 inferences. Any inference you make must be reasonable and must
6 be based on the evidence in the case.

7 The following things are not evidence, and you must
8 not consider them as evidence in deciding the facts of this
9 case. The attorneys' statements, arguments, objections, and
10 questions -- objections of the attorneys, any testimony that I
11 instruct you to disregard, and anything you may see or hear
12 when the court is not in session, even if what you see or hear
13 is done or said by one of the parties or by one of the
14 witnesses.

15 Furthermore, a particular item of evidence is
16 sometimes received for a limited purpose only. That is, it can
17 only be used by you for one particular purpose and not any
18 other purpose.

19 One second.

20 THE COURTROOM DEPUTY: All rise.

21 (Recess at 3:26, until 3:28.)

22 THE COURT: Excuse me, Ladies and Gentlemen.

23 Okay, we're on number ten. The following things are
24 not evidence, and you must not consider them as evidence in
25 deciding the facts of this case: The attorneys' statements,

1 arguments, questions, and objections of the attorneys, any
2 testimony that I instruct you to disregard, and anything you
3 may see or hear when the Court is not in session, even if what
4 you see or hear is done or said by one of the parties or by one
5 of the witnesses.

6 Furthermore, a particular item of evidence is
7 sometimes received for a limited purpose only. That is, it can
8 be used by you only for one particular purpose and not any
9 other purpose. I will tell you when that occurs and instruct
10 you on the purposes for which the item can and cannot be used.
11 You should also pay particularly close attention to such an
12 instruction because it may not be available to you in writing
13 later in the jury room.

14 And, Sarah, I'm going to have you read these; okay?
15 Because I'm choking for some reason.

16 COURTROOM DEPUTY: From time to time during the trial,
17 the judge may be called upon to make rulings of law on
18 objections or motions made by the lawyers. You should not
19 infer or conclude from any ruling or other comments she may
20 make that she has any opinions about how you should decide this
21 case. And if she should sustain an objection to a question
22 that goes unanswered by a witness, you should not guess or
23 speculate what the answer might have been, and you should not
24 draw any inferences or conclusions from the question itself.

25 At times during the trial, it may be necessary for the

1 judge to talk with the lawyers out of your hearing by using the
2 listen/talk devices or by calling a recess. They meet often
3 because during a trial something comes up that does not involve
4 the jury. We will, of course, do what we can to keep the
5 number and length of these conferences to a minimum, but you
6 should remember the importance of the matter you are here to
7 determine and should be patient even though we may need to
8 confer outside of your presence.

9 Any notes you take during this trial are only aids to
10 your memory. The notes are not evidence. If you do not take
11 notes, you should rely on your independent recollection of the
12 evidence and not be unduly influenced by the notes of other
13 jurors. Notes are not entitled to any greater weight than the
14 recollections or impressions of each juror about the testimony.

15 When you leave the courthouse during the trial, your
16 notes should be left in the jury room. When you leave at
17 night, your notes will be secured and not read by anyone. At
18 the end of the trial, your notes will be destroyed, and no one
19 will be allowed to read the notes before they are destroyed.

20 Pay close attention to the testimony as it is given.
21 At the end of the trial, you must make your decision based on
22 what you recall of the evidence. You will not have a written
23 transcript to consult.

24 You may submit questions to witnesses to clarify their
25 testimony during trial under certain conditions. If you feel

1 the answer to your question would be helpful in understanding
2 this case, you should raise your hand after the lawyers have
3 completed their examinations, but before the witness is
4 excused.

5 The judge will have you write your question and hand
6 it to the clerk. The judge will then privately confer with the
7 lawyers about the question and make a ruling on whether the law
8 allows the question to be asked of that witness. If the
9 question is of the type that is allowed, the judge will address
10 the question to the witness. Please do not directly speak to
11 the judge, the plaintiff, the defendant, the lawyers, or the
12 witnesses, but carefully follow this procedure if you wish to
13 have a specific question addressed to a witness.

14 During the trial, the judge may sometimes ask a
15 witness questions. Do not assume that because she asks
16 questions, she holds any opinion on the matter she asks about
17 or on how the case should be decided.

18 Now to be discussed are several rules of conduct that
19 you must follow as jurors. First, you should keep an open mind
20 throughout the trial. Do not make up your mind about what your
21 verdict should be until after the trial is over, you have
22 received the judge's final instructions on the law, and you and
23 your fellow jurors have discussed the evidence. Your verdict
24 in this case must be based exclusively on the law as the judge
25 gives it to you and the evidence that is presented during the

1 trial. For this reason, and to ensure fairness to both sides
2 in this case, you must obey the following rules. These rules
3 apply both when you are here in court and when you are not in
4 court. They apply until after you have returned your verdict
5 in this case.

6 One, you must not discuss the case, including anyone
7 who is involved in the case, among yourselves until you go to
8 the jury room to deliberate after the trial is completed.

9 Two, you must not communicate with anyone else about
10 this case, including anyone who is involved in the case, until
11 after you have returned your verdict.

12 Three, when you are not in the courtroom, you must not
13 allow anyone to communicate with you about the case or give you
14 any information about the case or about anyone who is involved
15 in the case. If someone tries to communicate with you about
16 the case or someone who is involved in the case when you are
17 not in the courtroom, or if you overhear or learn any
18 information about the case or someone involved in the case when
19 you are not in the courtroom, you must report this to the judge
20 promptly.

21 You may tell your family and your employer that you
22 are serving on a jury so that you can explain that you must be
23 in court. However, you must not communicate with them about
24 the case or anyone who is involved in the case until after you
25 have returned your verdict.

1 Number five, all the information that you will need to
2 decide the case will be presented here in court. You may not
3 look up, obtain, or consider information from any outside
4 source. There are two reasons for these rules. First, it
5 would not be fair to the parties in the case for you to
6 consider outside information or communicate information about
7 the case to others. Second, outside information may be
8 incorrect or misleading.

9 When it is said that you may not consider or obtain
10 any information from outside sources and may not communicate
11 with anyone else about the case, this is referring to any and
12 all means by which people communicate or obtain information.
13 This includes, for example, face-to-face conversations, looking
14 things up, doing research, reading, watching, or listening to
15 reports in the news media and any communication using any
16 electronic device or media such as telephone, cell phone,
17 tablet, computer, the Internet, text messaging, e-mails, chat
18 rooms, blogs, social networking sites like Facebook, YouTube,
19 X, Instagram, LinkedIn, or any other form of communication at
20 all. If you hear, see, or receive any information about the
21 case by these or any other means, you must report that
22 immediately.

23 The trial will proceed in the following manner:

24 First, Plaintiff's attorney will make an opening statement.
25 Next, the Defendant's attorney may make an opening statement.

1 An opening statement is not evidence but is simply a summary of
2 what the attorney expects the evidence to be. After the
3 opening statements, the Plaintiff will call witnesses and
4 present evidence. Then the Defendant will have an opportunity
5 to call witnesses and present evidence.

6 After the parties' main cases are completed, the Plaintiff
7 may be permitted to present rebuttal evidence, and Defendant
8 may be permitted to present surrebuttal evidence. After the
9 evidence has been presented, the attorneys will make closing
10 arguments, and the judge will instruct you on the law that
11 applies to the case. After that, you will go to the jury room
12 to deliberate on your verdict. I thank each of you for your
13 patience and attention.

14 We will now hear the opening statements from the
15 Plaintiff's and the Defendant's lawyers.

16 THE COURT: Thank you very much, Sarah.

17 So, Ladies and Gentlemen, we're going to send you to
18 your jury room for a brief few minutes so that the lawyers can
19 get set up for their opening statements, and then you will hear
20 the opening statements and then we are going to send you home
21 for the evening. So we'll have you back in the courtroom very
22 shortly.

23 THE COURTROOM DEPUTY: All rise.

24 (Jury out at 3:38.)

25 THE COURT: Okay, lawyers, I'm going to go ahead and

1 give you some rulings on the motions in limine. Anchor Glass's
2 motion in limine at Docket 183, Anchor Glass moves to bar
3 evidence regarding the hiring of Terron Gregg, Eric Gosmeyer,
4 Dustin Allen, and/or Robert Wetzler, all of whom are white with
5 criminal convictions who were hired prior to 2018 when Anchor
6 Glass did not hire Mr. Lange, as well as any evidence regarding
7 employees other than those who were hired by human resources --
8 resource specialist Petty.

9 Anchor Glass argues that because such employees were
10 hired by a different decision-maker other than Petty, they are
11 not similarly situated to Lange; and therefore, cannot be
12 considered proper comparators. And the Court agrees with
13 Mr. Lange that this evidence serves a different purpose and
14 that it is relevant.

15 According to Lange, the criminal history, job
16 applications, and employment histories of these above-mentioned
17 white employees, all of whom Petty was aware of when she chose
18 to reject his application, casts doubt on the credibility of
19 Anchor Glass's explanation for his rejection contained within
20 his EEOC position. Citing to Mr. Petty's -- or Ms. Petty's
21 resume, Mr. Lange maintains that she was the human resources
22 department for each of the hires and describes herself as being
23 responsible in that time for recruiting and new hire
24 processing. He claims without, without citation, that Petty
25 had been in the HR department through it all and was one of

1 only two such people in Lawrenceburg's plant.

2 Petty was specifically aware of Gregg's criminal
3 background and that Petty requested background checks on
4 Gosmeyer that revealed his criminal record. So taking all of
5 these facts together, the Court finds that Petty was cognizant
6 that the company had been hiring white applicants with serious
7 criminal backgrounds, which is relevant.

8 And the Court notes in the Seventh Circuit's decision
9 vacating the prior grant of summary judgment, which remanded
10 this case back to the Court, the Seventh Circuit did highlight
11 that the differences between Petty's testimony and the EEOC's
12 position statement that the company made have not been resolved
13 and that trial is the time to do so.

14 Mr. Lange has identified enough inconsistencies, according
15 to the Seventh Circuit, in the company's explanations about not
16 hiring him to be able to present the tribal issue of whether
17 the proffered nondiscriminatory reasons are pretext for racial
18 discrimination. Since a reasonable jury may infer pretext from
19 the criminal history, job applications, and employment
20 histories of Gregg, Gosmeyer, Allen, and/or Wetzler, the Court
21 is going to deny Anchor's motion. So that -- I think the
22 Seventh Circuit wants it in, so we're going to keep it in.

23 With respect to Lange's motion in limine, Mr. Lange wants
24 to bar evidence or argument regarding the hiring of Cody Grady.
25 Is that the only person you're trying to offer, Cory [sic]

1 Grady?

2 MR. IMM: That's the only one subject to my motion,
3 yes.

4 THE COURT: Okay. So with respect to Cory [sic]
5 Grady, that he was hired -- he's an African-American that
6 Anchor Glass hired in September of 2018, and Plaintiff's
7 position is that this occurred after the company received
8 notice of Lange's EEOC charge of discrimination. The thrust
9 behind Mr. Lange's motion is that Anchor Glass engaged in
10 corrective action between the time when it declined Mr. Lange's
11 application, and then it hired Grady, such that Grady's hiring
12 has no relevance to Anchor Glass's motive or intent at the time
13 that it denied Lange's application.

14 And the Court has read all of the case law, and I
15 don't reach the conclusion that Lange wishes without some
16 additional evidence that suggests either a change in hiring
17 policy or a statistical evidence that supports evidence of
18 discrimination. So upon cursory review of the documentary
19 trial evidence that's been filed with the Court as requested,
20 at this time I cannot determine that any evidence presented at
21 trial that Anchor Glass has hired Mr. Grady after choosing
22 against hiring Mr. Lange would be inadmissible for all
23 purposes. So for these reasons, the Court is going to deny
24 Lange's -- Mr. Lange's motion in limine.

25 Then the other objection was Anchor Glass's objection

1 to Mr. Lange's second amended final witness list, and I believe
2 your objection is that you believe Mr. Lange's counsel wants to
3 lead when -- use as leading -- leading questions for Gregg and
4 Gosmeyer. Is that what you're asking to do? Because he's
5 either a hostile witness, an adverse party, or a witness
6 identified by an adverse party, correct?

7 MR. IMM: Correct, Your Honor. We did not have the
8 opportunity to prepare a brief on that issue since the
9 objections were just filed, but yes, we believe the case law
10 plainly provides that employees of a defendant are considered
11 identified with the defendant; and therefore, the opposing
12 party should be able to examine them as on cross. And I can
13 provide citations if the Court wishes.

14 THE COURT: What's your citation?

15 MR. IMM: I would call the Court's attention, first of
16 all, to *Gibbons v. The Village of Sauk Village*. That's 2017
17 U.S. District LEXIS 179108, at paragraph 12. It cites to the
18 Seventh Circuit case of *Ellis v. City of Chicago*, 667 F.2d 606,
19 at page 613. The Court in *Gibbons*, Your Honor, held that
20 current employees are often treated as adverse witnesses to the
21 employer's opposing party as they are considered to be
22 identified with an adverse party. And in citing *Gibbons* -- I'm
23 sorry, in citing *Ellis*, the Seventh Circuit case, the Court
24 there held that current officers of the defendant city were
25 considered adverse witnesses to the plaintiff, and that they

1 are identified with the adverse party. And consistent with
2 Federal Rule of Evidence 611, the plaintiff or the opposing
3 party can treat them as adverse witnesses to the extent of
4 asking them leading questions.

5 THE COURT: Okay.

6 MR. IMM: One other citation I will call to the
7 Court's attention, and that is *Williams v. Bailey*, which is a
8 decision from this Court in 2023, 2023 U.S. District LEXIS
9 1222, four twos, 122229, at paragraph 24, where this Court
10 considered even former employees of the Defendant, Indiana
11 State Troopers, to be identified with an adverse party in a
12 case in which one of their fellow officers was called as a
13 witness in a 1983 trial, where a fellow officer was involved.

14 So we believe these individuals clearly fall within
15 the ambit of Federal Rule of Evidence 611, which provides that
16 cross-examination may be employed when a party calls a hostile
17 witness, an adverse party, or a witness identified with an
18 adverse party.

19 THE COURT: Okay. I did have -- my law clerk did pull
20 for me *Ellis v. City of Chicago*. So I have read that case.
21 Did you have anything to add, Counsel?

22 MR. MURRAY: Yes, Your Honor. I know you've seen our
23 brief. The only thing I would note, Your Honor, is Plaintiff
24 is also calling Brad Lange, who is a current employee of Anchor
25 Glass. Obviously, Plaintiff has not identified Mr. Lange as a

1 potentially adverse witness or identified for the party despite
2 the fact that he also is a current Anchor employee.

3 So, Your Honor, I think that suggests that this is not
4 an across-the-board rule that a current employee is always to
5 be identified with his or her employer in a lawsuit, and we
6 don't know. And I would say there's no evidence in the record,
7 to my knowledge, as to what the relationship may be, if any,
8 between Mr. Lange and Mr. Gregg and Mr. Gosmeyer.

9 They have both worked at the plant for some time, but
10 we don't know what their relationship is outside of work, if
11 they have such a relationship. Thank you, Your Honor.

12 THE COURT: Okay. All right. Well, the difference
13 with Brad Lange, we know he's not hostile or adverse, because
14 that's the Plaintiff's brother, so as I know some families it
15 might be, but I don't think that's the case here. And so what
16 we'll do, do you know if they have a personal relationship with
17 your client?

18 MR. IMM: They do not, Your Honor. Mr. Gosmeyer and
19 Gregg have no relationship with Mr. Lange.

20 THE COURT: Okay. All right. With that confirmation,
21 I'm going to overrule the objection. The case law does say
22 that witnesses identified with an adverse party, and because
23 they are current employees, I'm going to allow Plaintiff to
24 lead when he calls those witnesses.

25 Okay. All right. So we will -- how much time do you

1 need to get ready for your opening statements? And how much
2 time did I give them, 30 minutes per side? Okay. It's going
3 to be a full day of work. So we'll take about ten minutes,
4 and you'll be ready?

5 MR. IMM: We will.

6 THE COURT: Okay. We'll take a ten-minute break, and
7 then we'll be ready.

8 COURTROOM DEPUTY: All rise.

9 (Recess at 3:50, until 4:02.)

10 THE WITNESS: We're back on the record, Cory B. Lange
11 versus Anchor Glass Container Corporation, and Counsel, we have
12 a jury selected. They've been sworn. They've been given their
13 preliminary instructions, and at this time we're going to do
14 opening statements.

15 Plaintiff's counsel, are you ready?

16 MR. IMM: Yes, Your Honor.

17 THE COURT: Defendants ready?

18 MR. MURRAY: Yes, Your Honor.

19 THE COURT: Sarah, you may bring in the panel.

20 COURTROOM DEPUTY: All rise.

21 (Jury in at 4:04.)

22 THE COURT: Ladies and Gentlemen of the Jury, we're
23 back on the record, Cory B. Lange, Plaintiff versus Anchor
24 Glass Container Corporation, Defendant. And at this time
25 you're going to hear the opening statements of counsel.

1 Because Plaintiff has the burden, he will go first at all
2 stages of the proceedings.

3 Mr. Imm, you may make your opening statement.

4 MR. IMM: Thank you, Your Honor. Am I on a timer,
5 Your Honor, for this?

6 THE COURT: Yes, the clock is on. I'll give you --
7 I'll let you know when you have two minutes?

8 MR. IMM: Yeah, if you could.

9 THE COURT: Okay.

10 MR. IMM: I can't really see that. Thank you.

11 THE COURT: All right.

12 MR. IMM: Thank you.

13 **OPENING STATEMENT BY:**

14 MR. IMM: Ladies and Gentlemen, thank you once again,
15 first of all, for your service. The judge has told you that --
16 just before we went on break, the judge told you that you are
17 to decide this case on the basis of the evidence and that what
18 the attorneys say in their statements is not evidence, which is
19 exactly right. You may be wondering then why should I listen
20 to the opening statement when the judge has told us we're
21 supposed to decide this case on the basis of the evidence, and
22 this isn't evidence?

23 Well, I'll ask you to do this: I'm going to be making
24 a number of representations to you in my opening statement
25 about what I believe the evidence is going to show, about the

1 things that I intend to prove to you in the course of the case,
2 and I'll ask you to hold me to those representations. And at
3 the end of the case ask yourself, did Mr. Imm and Ms. Emerson
4 prove to me the things that Mr. Imm said in his opening
5 statement he was going to prove to me?

6 And I think if the answer to that question is yes,
7 then your verdict will be for the Plaintiff. And if I do not
8 prove to you the things that I'm about to tell you, then I
9 think your verdict will be for the Defendant.

10 The first thing I'm going to say is that I represent a
11 convicted felon. The second thing I'm going to say is that I'm
12 extremely proud to represent this gentleman, and by the end of
13 the case I think you're going to understand why.

14 Cory was born in 1980. He's 44-years-old. He has one
15 sibling, a brother Brad, who you will hear from during the
16 course of the trial. Cory and Brad had a father and then a
17 stepfather who were in the military, and so they moved around
18 quite a bit when they were young.

19 When Cory was about 11 or 12, he settled in the
20 Lawrenceburg area. Brad is two years younger than Cory. Cory
21 didn't do well in school. He struggled in school. He dropped
22 out in high school in I believe his sophomore year. He worked
23 some low wage jobs, and he got into some legal trouble, a
24 couple of misdemeanors, but then something more serious.

25 In 2009, his criminal record culminated in a

1 conviction for a felony. He sold Oxycontin, a controlled
2 substance, and he was sent to prison. He ultimately spent
3 three years in prison. He got out at one point but violated
4 his probation and went back. He spent a total of three years
5 in Branchville Prison in Indiana.

6 It was an awful experience, but it was the best thing
7 that ever happened to Cory, because it was there, in that
8 prison, that Cory committed to turning his life around, and he
9 did. He got his GED while he was in prison, and he came to
10 appreciate it. He had three children at the time he went away,
11 three children, and he came to appreciate how important those
12 children were to him and how much he wanted to be a good father
13 and how much he wanted to be a good role model and a good
14 example for them.

15 So when he got out of prison, he started to slowly put
16 his life back together and slowly rebuild his life. He adhered
17 strictly to the terms of his probation, reported every month,
18 never failed a drug test, got a job, not a great job, but he
19 got a job with a temporary service working at a company called
20 Pri-Pak or Pri-Pak, which later would become Refresco.

21 He worked there as just a temporary for a year with no
22 benefits or anything, but he was dedicated to it. He showed up
23 every day. After a year of doing a good job, they hired him
24 permanently, and he worked there from 2013 until -- well, we're
25 going to talk about 2018, but he was there for I think a total

1 of about seven or eight years.

2 He became a devoted father to his children, of whom
3 there are four. His two lovely daughters still live with him.
4 He still supports them. His boys are older now and out of the
5 house. He made a good, honest living and has made a good,
6 honest living, and he has never again gotten in any trouble
7 with the law.

8 A life that could have gone down a very dark path was
9 turned around, turned around in the right direction, and was
10 turned around as a result of a personal and deep commitment
11 that Cory made when he was in that prison. And it's a
12 commitment that he's kept to this day.

13 In 2018 he applied for employment at Anchor Glass. I
14 think we said in voir dire, you folks said you hadn't really
15 heard about this company, but in Lawrenceburg it's pretty
16 well-known. It's considered the best or one of the very best
17 jobs in Lawrenceburg. It pays very well. The benefits are
18 good. There's a union there. It's a very attractive job. His
19 brother, Brad, who I've already mentioned, worked there at the
20 time. He still does.

21 He applied for a position called selector/packer.
22 Selector/packer is an entry-level position at Anchor Glass. It
23 ultimately leads to other positions within the company. You'll
24 hear about the hot-end and the cold-end, and there are other
25 jobs you can do. But just about everybody starts as a

1 selector/packer, and they hire these people in groups. They
2 don't, typically don't hire just one guy at a time. They
3 typically hire multiple people for this entry-level job.

4 Now, Cory obviously was cognizant of the fact that he
5 had this conviction. He had actually applied for work at
6 Anchor Glass in 2004, and although he was initially hired, he
7 was let go about ten days in because of a misdemeanor that was
8 on his record at that time. They hire these people on a
9 probationary basis. So you're on probation for the first 30
10 days. You don't go in the union right away or anything.

11 So Cory didn't even make it through his probation. As
12 I said, he was there about two weeks back in 2004 and was let
13 go then because of the misdemeanor. I believe the evidence
14 will be that at that time, in 2004, this company had a policy
15 against hiring people who had criminal records.

16 But Cory had -- in 2018, Cory had heard from his
17 brother and through the grapevine about an employee at Anchor
18 more recently named Terron, and this Terron, according to what
19 Cory was told, actually was a convicted felon. So Cory said to
20 himself, all right, I'll give this a shot. Maybe things have
21 changed. Maybe their policies are different now.

22 By this time he had worked five solid years at
23 Refresco, which is a manufacturing facility like Anchor Glass.
24 Refresco makes beverages. Anchor Glass makes bottles for
25 beverages. So he had a lot of relevant experience and had done

1 very well there. He had a letter of recommendation from his
2 manager, from his boss at Refresco, and he had really, as I
3 said, put his life together.

4 So he says, I'll give it a shot. Anchor Glass gets 11
5 applications at this time in 2018 to sift through. They bring
6 in ten of those 11 for an interview, and Cory was one of those
7 ten that they brought in for an interview. And he gets
8 interviewed by a panel of three managers at Anchor Glass. You
9 will see their names on the screen: Vinnie Cooper, Sherrie
10 Gifford, Liam Curtin, all of them managers with the company.

11 And Cory goes into that interview, and he wows them.
12 I mean, he literally wows them. They love his personality.
13 They love his work ethic. They love his attitude, and out of
14 the ten people who had interviews, these managers say, we got
15 four. They say four people that we recommend, and Cory was
16 right there in the top four.

17 In fact, you will see in the evidence the interview
18 forms that were filled out by these three managers, and you'll
19 see that Cory's ratings in these interview forms were off the
20 charts and were higher than just about anybody else who was
21 being considered, including most of the four people who were
22 considered the top. So Cory was like right at the top of their
23 recommended list.

24 Now, in fact, one of the managers, Vinnie Cooper, happens
25 to have a conversation with Brad Lange that you'll hear about

1 after the interview, and he says basically, wow, I think your
2 brother is a shoo-in.

3 Now, the managers send these recommendations to a woman
4 named Katie Petty. Katie Petty was an HR specialist. She had
5 been at the company since 2011. She had been at HR since April
6 of 2014. The three managers go to Ms. Petty, and they say, we
7 recommend these four. But at this company, as at a lot of
8 companies, before you get hired, you have to go through some
9 processing. You have to go through a background check, and you
10 have to pass a pre-employment physical and you have to have a
11 drug test.

12 So Katie Petty then goes about calling the four people who
13 had been recommended to tell them about these prehiring
14 procedures, and she calls Cory. And as part of that
15 conversation she says, "We're going to be running a background
16 check on you, Cory. Is there anything we should know about?"
17 Cory is honest and upfront and he says, "Yes," and he tells
18 them, tells her about his 2009 conviction.

19 At that point, Katie Petty is done with Cory Lange, did not
20 run the background check. She decided, on her own, she was
21 going to overrule the recommendations of these three managers,
22 and she was not going to hire this guy. She heard black guy,
23 criminal record, no sale. That was the end of it.

24 Now, Cory's -- and she sends him an e-mail, says, "We're
25 going in a different direction." And Cory suspects that it's

1 probably because of what he said in that phone call, because
2 everything was sounding great up to that point. The
3 interviewers loved him. He had a lot of relevant experience.

4 So he starts to wonder what's going on here, and he also
5 knows about this guy named Terron. He didn't even know his
6 last name at that point, but he knew that there are -- or he
7 thought he knew that there was a guy there who was a convicted
8 felon named Terron. And he starts to wonder, wait a minute,
9 was I discriminated against?

10 And so he proceeds to file a -- what's called a charge of
11 discrimination with an agency, a federal agency called the
12 Equal Employment Opportunity Commission, or EEOC for short.
13 And, Diana, can I ask you to bring up our timeline?

14 So you'll see here on the screen kind of a timeline of the
15 key events. The first thing, March 13 to 16, is the dates that
16 these interviews of the ten people took place. It was a couple
17 of weeks later, Cory gets the e-mail from Ms. Petty saying he's
18 not hired.

19 He starts to wonder, wait a minute, I know this Terron guy
20 was hired, and he's a felon or at least I think he is, and he's
21 white. Maybe this was discriminatory. He files this, what's
22 called a charge of discrimination, which you'll see in the
23 evidence, on June 26th of 2018.

24 Next, on July 5 of 2018, a short time later, the EEOC sends
25 Ms. Petty a notice of this charge and sends it to her, to

1 Ms. Petty. She's their contact at the company, and she gets
2 this charge stating, hey, I wasn't hired apparently because of
3 my criminal background, but I know there's a white guy there
4 named Terron who appears might have been a felon. This might
5 be discrimination.

6 So this goes to Ms. Petty, and then on September 4th, 2018,
7 the company submits its response to that charge. And that
8 response is going to be one of the key pieces of evidence in
9 this case. It's called a position statement, and it was
10 presented to the EEOC by the company's lawyers.

11 Two things about this position statement: Number 1, it is
12 the first thing that the Defendant ever said about why Cory
13 wasn't hired. So this is when it's freshest in their minds;
14 okay? And that's going to become important for reasons I'm
15 going to explain in a minute, because they're going to tell
16 different stories about why they didn't hire Cory later, but
17 the first thing, the first thing out of the chute that they
18 show is in this position statement.

19 The second thing I'm going to tell you about this position
20 statement is that it was clearly and unequivocally based on
21 information from Katie Petty, and why that's important is going
22 to become clear, as well. The position statement refers again
23 and again and again to Katie Petty says this, Katie Petty knows
24 this, Katie Petty discovered this. The position statement that
25 they submitted on September 4th of 2018 was when everything was

1 fresh in their minds, and it was based entirely on information
2 from Ms. Petty.

3 And this is what the Defendant said in that September 4,
4 2018, position statement when everything was fresh. When they
5 were asked, the company was asked, why did Katie Petty reject
6 the manager's recommendation and not hire Cory Lange? So when
7 it gets up here in a minute, you'll see, first of all, they
8 say, as I told you before, that he was, in fact, in the top
9 four of people recommended by the panel of interviewers.

10 The next thing it says is that Katie Petty called to ask
11 Cory and the other four -- the other three, hey, when can you
12 start? Can you take a pre-employment physical the next day and
13 tells them, we're going to be running a background check on
14 you. She says those three things.

15 These are all things that you do for people who you have
16 made a decision to hire. You don't -- this company, at least,
17 the evidence will be, this company doesn't run a background
18 check on you if they haven't made the decision to hire you.
19 This company doesn't send you for a pre-employment physical and
20 drug test unless they've made a decision to hire you, but
21 they -- but Ms. Petty was asking all four of these people those
22 exact questions, indicating clearly that they were intending to
23 make offers to these four individuals.

24 So -- I'm sorry, I was hoping to have this up for you.
25 We're having...

1 Your Honor, would it be possible to pause my time briefly?

2 THE COURT: Yes.

3 MR. IMM: We had tested this. We thought it was...

4 Does that mean 12 minutes have expired?

5 THE COURT: That means you have 12 minutes left.

6 MR. IMM: Twelve minutes remaining. Okay, thank you.

7 THE COURT: All right, Counsel, I think your...

8 MR. IMM: Can you go to page 2.

9 So at the bottom of the page here you'll see that Cory
10 was in the top four applicants and that she asked each of the
11 top four applicants about how the swing shift operates, when
12 they would be available to start, and whether they could take
13 the pre-employment physical the following day; again,
14 indicating the plan at that time was to hire all four of these
15 individuals. She also informed them that she would be running
16 a criminal background check. Again, not something you do
17 unless you're planning at least to make a conditional offer of
18 employment, and the company's own policies say that.

19 Now, on the next page you'll see exactly as I
20 described. She asked them if there was anything -- I'm sorry,
21 Diana, can you just highlight that whole paragraph for me,
22 please.

23 She asks, is there anything that she should be aware
24 of regarding Mr. Lange's background, and exactly as I described
25 previously, he responded in the affirmative and told her

1 everything. Look at that last sentence. Based upon
2 Mr. Lange's admission, Ms. Petty decided not to extend him an
3 offer; and therefore, did not run the criminal background
4 check. She's -- the company says that two more times in this
5 position statement, two more times, on page 4, in the
6 second-to-last paragraph.

7 Can you highlight that? No, above it.

8 Anchor Glass declined to extend an offer to Mr. Lange
9 because he admitted to a conviction for dealing narcotics, and
10 I'm running out of time here, so I'm going to skip over the
11 third example of that. But they say three times in this
12 position statement that Mr. Lange was not hired for one reason
13 and for one reason only, because he had a criminal conviction.

14 That's it. That's it, and because of that, as I said,
15 Ms. Petty at that point was done, did not even bother to run a
16 background check on him. Now, if this company had a policy
17 that said we're not hiring anybody with a criminal record, we
18 wouldn't be here, but they didn't have that policy.

19 At least beginning in 2014, we have evidence that they
20 hired four different people from 2014 up until the time that
21 Cory applied, four different people with felony convictions on
22 their record. Every one of them was white. Every one of them
23 was white, and during that same period of time, they didn't
24 hire a single African-American with a criminal conviction, not
25 one.

1 They hired a guy, Ladies and Gentlemen, named Dustin
2 Allen, who denied on his application that he had a criminal
3 record, and he had one as long as your arm. And they still
4 hired him even when they found out on his background check that
5 he had multiple charges and had lied on his application. They
6 hired that guy, but he was Caucasian.

7 By the way, nothing against these folks. You're going
8 to hear from two of them during the course of the trial, Terron
9 Gregg and Eric Gosmeyer. They're good guys. At least I think
10 Terron is because I've deposed him. You're going to hear from
11 both, Gosmeyer.

12 They deserve second chances. They had a background
13 similar to Cory's. They deserved the second chances they got,
14 and they made the most of it. But we're going to prove to you,
15 Ladies and Gentlemen, that Cory deserved it too, and he didn't
16 deserve to be denied that second chance on the basis of his
17 race.

18 Now, it became apparent after 2018, after the company
19 gave its first take, so to speak, on why it wasn't hiring Cory.
20 It soon became apparent that this story was not going to hold
21 up. It wasn't going to hold up, saying we didn't hire him
22 because of his conviction. We didn't hire him because of his
23 conviction. Well, wait a minute. Your policy had changed.
24 Your policy says we'll look at it on a case-by-case basis.
25 You've got four white guys there with pretty serious criminal

1 backgrounds.

2 Cory had a great interview and presented to you with a
3 great record. The panel all loved him. Wait a minute, are you
4 really saying you didn't hire him because he's got a criminal
5 background? What about all these other guys? And at that
6 point they had to come up with something different, and boy,
7 did they ever.

8 Three years later they started singing a very
9 different tune, and you're going to hear about that. First of
10 all, they tried to say that, well, we were only going to hire
11 three people, not four. That's nowhere in their position
12 statement. They didn't say that in 2018, and there's no
13 document. There's no requisition record. There's no e-mail
14 from somebody at the plant to Katie Petty saying, "We want to
15 hire three people." Nonsense.

16 They all -- Ms. Petty also tried to say -- and this is
17 under oath, Ladies and Gentlemen. She also tried to say that
18 she didn't have any knowledge about Cory's race. That is a
19 lie. That is an absolute bold-faced lie because she had worked
20 with Brad Lange, Cory's brother. She knew Cory was Brad
21 Lange's brother, and yet she would go so far as to state under
22 oath in 2021, I didn't even have any understanding of what
23 Cory's race was, but it gets worse.

24 She also says, again, under oath, that I attended most
25 of the interviews, including the interviews of the three guys

1 that were hired, and then I decided I wanted to hire those
2 three guys based on what I saw in their interviews. And before
3 I ever met Cory, before I ever talked to Cory, rather, I had
4 decided who I was going to hire.

5 The position statement, again, when it was fresh in
6 everyone's mind to this federal agency, the position statement
7 says Katie Petty was out of the office when the interviews were
8 taking place. So she did not attend any of the interviews, and
9 we don't have any notes of her doing any interviews, so the
10 company goes from, in 2018, saying Katie wasn't at any of the
11 interviews to 2021, because it serves their purpose.

12 They change it drastically and say, no, I was present
13 for almost all the interviews; and, in fact, I made my decision
14 before I ever talked to Cory on the basis of what I saw in
15 those interviews -- those interviews that this company said in
16 2018 she wasn't even at.

17 THE COURT: Counsel, this is not argument, please.

18 MR. IMM: Of course. I'm sorry, Your Honor.

19 And then she says, the real reason I didn't hire Cory
20 was because when I had that phone conversation with him where
21 he told me about the criminal conviction, she says, he said
22 that he would do it again. He just wouldn't sell to an
23 undercover officer.

24 Ladies and Gentlemen, that's nowhere in the position
25 statement from 2018. That's nowhere in Ms. Petty's notes from

1 that conversation. That statement was never made, and it's a
2 lie. All of these are lies, and they are shameful. And we
3 will prove to you that they are lies, each and every one of
4 them.

5 So, why did the Defendant change its story? Well,
6 we're going to prove to you that they changed their story for
7 the same reason that anybody changes a story over time, because
8 they've got something to hide. We're going to prove that
9 Anchor Glass has something to hide, and they tried very hard to
10 hide it.

11 In 2004, as I mentioned, Cory applied for employment,
12 and on that occasion he lied. He said in his application he
13 didn't have a criminal record. That was false, and because it
14 was false, he never passed his probationary period in 2014.
15 But in 2018 he was honest about his criminal record. They
16 asked him. It wasn't on his application, but they asked him.
17 And he said, yeah, I was convicted in 2009. It's a felony. I
18 went away for three years.

19 He also said on that application that he hadn't worked
20 for the company before because in his mind, he hadn't. He was
21 there for two weeks. He never got out of probation. He wasn't
22 a real employee of the company. He probably should have asked
23 that -- answered that question differently, but this leads to
24 another falsehood that the Defendant has tried to convey. And
25 that is that they didn't hire him in 2018 because he said on

1 his 2018 application that he hadn't worked there before.

2 That wasn't any part of the reason that they didn't
3 hire him. You know how I know that? Because that's what
4 Anchor Glass said in 2018. Anchor Glass said in 2018 that they
5 didn't find out about Cory's very brief 2004 employment until
6 they were investigating the EEOC charge. But in 2021,
7 Ms. Petty tried to claim that she knew about it.

8 THE COURT: You're under two minutes, Counsel.

9 MR. IMM: Thank you, Your Honor.

10 So again and again and again, this company has changed
11 its story and will -- it will double down on these
12 misrepresentations and these falsehoods. During the course of
13 this case, they will take the oath, and they will tell you
14 these same lies that I've just tried to outline for you. They
15 will twist themselves into knots to convince you that these
16 lies are true. I'm going to prove that they're not true.

17 I'm not going to be asking you to forgive Cory for the
18 wrongs he committed in his past life, but I am going to prove
19 to you that he deserved a second chance. I am going to prove
20 to you that he deserved to be treated the same way as Terron
21 Gregg and Eric Gosmeyer and Dustin Allen and Robert Wetzler,
22 and that he was not.

23 And the evidence will convince you, Ladies and
24 Gentlemen. I will convince you. I intend to convince you,
25 that at the end of this case you'll be convinced that if every

1 other fact about this case were exactly what it is: If Cory
2 was still Cory, if Cory still had that record, if Cory had five
3 years of good employment, if Cory had still wowed the
4 interviewers the way that he did, if Cory still had that letter
5 of recommendation, if all of that were true, but he was white,
6 this company would have done exactly what it did for those
7 other four gentlemen. And it would have hired him, and it
8 would have given him the second chance that he deserved.

9 I am sorry for getting so emotional. That's wrong of
10 me. I apologize. I thank you all very much for your time and
11 attention.

12 THE COURT: Thank you, Mr. Imm.

13 And, Mr. Murray, you may come up to the lectern.

14 MR. MURRAY: Thank you, Your Honor.

15 **OPENING STATEMENT BY:**

16 MR. MURRAY: Good afternoon. Thank you again for your
17 time and for your attention and listening to us this afternoon
18 and over the next couple of days.

19 The facts that we're going to show over the next
20 couple of days are different from what you've just heard. The
21 facts will show this is a case that involves in the spring of
22 2018, Anchor Glass needed to fill three entry-level positions.
23 It received 11 applications for those three positions, and
24 ultimately, only three people out of those 11 were hired.

25 Eight of the 11 applicants were, therefore, given the

1 news their applications hadn't been successful. Mr. Lange was
2 one of those unsuccessful applications -- applicants. Most, if
3 not all of those other applicants, were Caucasian who were not
4 successful.

5 This is a case about a disappointed job applicant who
6 can't accept the simple fact that three other applicants were
7 more qualified than he was for the position. It's also about a
8 job applicant who refuses to accept responsibility for some of
9 the mistakes that he made in the application process.

10 In fact, Mr. Lange was hired by Anchor Glass in 2004.
11 He worked for Anchor Glass for less than two weeks, about 11
12 days. He was terminated, as you heard, because he had failed
13 to disclose a criminal conviction on his 2004 application.
14 When he sought to be rehired in the spring of 2018, in that
15 application he misrepresented that he had not worked for the
16 company before.

17 There's a question on the first page of the
18 application that asks every applicant, "Have you worked for
19 Anchor Glass before? And if so, where and when?" Mr. Lange
20 checked no for that question.

21 Then, during his interview with a human resources
22 employee, he also made a comment about a criminal conviction
23 that he had in 2009, as you heard, for dealing Oxycontin. In
24 the course of discussing that with the HR employee, he made a
25 comment about something along the lines that if he had done it

1 again, or he were to do it again he would make sure he wouldn't
2 be dealing with the same person who turned out to be an
3 informant on him in 2009.

4 Now, the company is willing to hire convicted felons
5 who have paid their dues to society and are seeking to
6 reestablish themselves in a life and a life for themselves.
7 It's perfectly willing to do that, and as you heard, it has
8 hired convicted felons on a number of occasions. The company
9 has a policy under which it looks at criminal records on a
10 case-by-case basis for each person applying.

11 Maybe Mr. Lange in this case was joking, maybe he was
12 attempting to make light of the situation during the interview
13 when he was discussing this conviction, whatever the reason, we
14 don't know what he intended. It didn't sit well with the HR
15 employee. Finally, and most importantly, Mr. Lange didn't have
16 the same skills, experience, and potential that the other
17 applicants had who were ultimately hired. Therefore, he was
18 included with the eight unsuccessful applicants because there
19 were three better qualified people who were hired.

20 None of the three people who were hired, none of them,
21 had made misrepresentations on their applications the way
22 Plaintiff did. None of the three people who were hired had
23 criminal convictions about which they made inappropriate
24 comments during their interview the way Mr. Lange did. None of
25 the three people who were hired had previously worked for the

1 company as Mr. Lange had, and not made it through their
2 probationary period the way Mr. Lange hadn't.

3 You will hear more about this over the next couple of
4 days. I wanted to introduce myself again. Again, my name is
5 Chris Murray. I'm an attorney at Ogletree Deakins. My
6 colleague, Ellen Pactor, is also at the table. You will also
7 see Sam Hijab, who is one of the employees of Anchor Glass. He
8 is the general counsel for the company. You also see us
9 talking from time to time with Melissa Couch, who is the
10 paralegal who is assisting us.

11 Anchor Glass, as you can probably imagine, is a
12 company that manufactures glass and glass products. It makes
13 bottles and jars that are used in the food and beverage
14 industries, and it's based -- or its factory that we're
15 discussing in this case is in Lawrenceburg, down on the Ohio
16 River, not too far from Cincinnati. The company's
17 headquartered in Tampa, in Florida, where its senior management
18 is located. It also has several other factories around the
19 country.

20 During the time we'll be talking about, the company
21 had about 280 employees in Lawrenceburg. About 250 of those
22 employees were involved in manufacturing. About 30 of those
23 employees were involved in administration or management. Out
24 of those 250, there were hourly workers, hourly employees
25 working in the process of making glass and glass products, and

1 the production area has multiple areas that you'll hear about.

2 There's the hot-end of the factory. That's where the
3 glass is made. The conditions there are extreme. There's also
4 the cold-end, and that's where after the glass is formed in the
5 bottles and jars, it cools down, it's inspected, and then it's
6 ultimately packed for shipping to the company's own employees
7 -- or to the company's own customers. This is an extreme
8 environment in this factory because of the heat and because of
9 other circumstances.

10 The factory also runs 24 hours a day. It's a 24/7
11 operation, and it operates a swing shift that you'll hear
12 about. That involves an employee working the first shift for
13 seven days and then being off for two days. Then they move to
14 the second shift, work that for seven days and are off for two
15 days. And then they move to the third shift, work that for
16 seven days and are off for three days, and then the whole cycle
17 starts over again.

18 It's also a unionized facility. New employees, new
19 hourly employees, serve a period of time, a probationary
20 period, before they become subject to the union contract. At
21 this time, it was a 30-day period, and the probationary period
22 allowed both the company and employee the opportunity to see if
23 that employee -- if this was the right person for the job and
24 the right job for the person. Not everyone can deal with the
25 swing shift. It's challenging. The environment in the plant

1 is challenging. Not everyone can deal with it.

2 Also, during that 30-day probationary period,
3 sometimes the company would receive new information it didn't
4 have; for example, the results of background checks that hadn't
5 been completed fully or drug test results. And depending on
6 those results, in some cases employees would be let go during
7 the probationary period, just as Mr. Lange had in 2004 when the
8 company discovered that he had a conviction that he had not
9 disclosed.

10 I would like to take a moment now to show you a
11 short -- we've got a short video of what it's like in the
12 plants so you can see it. You will see in this video, you will
13 see the offices where it's located, the human resources offices
14 and other administrative offices. From there you will see a
15 display case that shows some of the products that are made at
16 this plant. Within the plant itself, you will then see,
17 starting from the hot-end, you will see the furnace where the
18 glass is made, and then the molten glass being distributed to
19 various machines in the plant where it's shaped into bottles
20 and jars. And then finally, through to the cold-end, and then
21 where it's shipped.

22 So, Ms. Couch, if you could please go ahead and play
23 the video, please.

24 (Video playing in open court.)

25 MR. MURRAY: So that gives you some idea of what

1 happens at the Lawrenceburg plant. I mentioned that there are
2 different areas within the plant: The hot-end, the cold-end,
3 and so forth. There's various categories of hourly employees.
4 The entry-level position in the plant is a position you're
5 going to hear quite a bit about over the next couple of days.
6 It's called selector/packer.

7 That's the, as I mentioned, it's the entry-level
8 position. It's a position most hourly workers are hired into,
9 and then assuming that the person passes their probationary
10 period and becomes a member of the union, from that position
11 you will have the chance to then bid on other jobs and move up
12 within the plant through the rest of their career at Anchor
13 Glass.

14 So when the company is hiring people for the
15 selector/packer position, they're actually intending and hoping
16 that these people will not stay in that position permanently
17 but that they will actually move up through the bidding process
18 to these other positions in the plant. That's something that
19 the company looks at when it's interviewing and intending to
20 hire new selector/packers.

21 I mentioned that there's also administrative positions
22 at the plant in Lawrenceburg, and that, of course, includes the
23 plant manager, there's also accounting, and then also human
24 resources. There is a human resources manager who is
25 responsible for doing all the hiring at the plant. That

1 position, over the course of some of the time that we're going
2 to be discussing about in that case, or in this case, human
3 resources manager has changed several times.

4 Ms. Couch, could you please show Exhibit 264.

5 It is the human resources manager who I mentioned is
6 responsible for all of the hiring.

7 I'm sorry, 263. I apologize.

8 The human resources manager is the person who collects the
9 applications, reviews the applications, sets up the interviews,
10 and decides who to interview. This is a timeline from 2004 to
11 2018. At the top of that timeline you can see the various
12 human resources managers from the plant. The first one
13 listed is HR manager Mike Whiting. Mr. Whiting was the HR
14 manager there for a long time up until July of 2013.

15 He was then followed, after he retired, by HR manager Liz
16 McMahon. She's also referred to as Elizabeth McMahon, but
17 you'll hear her mostly referred to as "Liz." She was there for
18 about four years, from July 2013 to July 2017.

19 After Ms. McMahon left the company, the HR manager position
20 was actually vacant, and this is the relevant time period when
21 Mr. Lange applied for a job in Lawrenceburg. The position was
22 vacant because the company was undergoing a hiring freeze.
23 There were some changes going on at the company, and it wasn't
24 doing any new hiring in Lawrenceburg. So the HR manager
25 position stayed vacant for a while. That vacancy finally

1 ended, and another HR manager was hired in May of 2018, and
2 that's Lindsay Glacken. And then she remained there until just
3 a couple of months ago.

4 So as you can see, there are a number of HR managers who
5 were involved over this time period, and during the time of the
6 hiring freeze that I mentioned, that period is the most
7 relevant because that's when Mr. Lange applied for a job here.

8 There's another HR position that's called the HR
9 specialist. That's a clerical administrative position. The HR
10 specialist reports to the HR manager, and during the time that
11 we'll be talking about, the HR specialist position was held by
12 a lady named Katie Petty.

13 She reported to -- first she reported to Ms. McMahon in the
14 position, and then she reported to Ms. Glacken after she was
15 hired. You will meet Katie Petty. Ms. Petty, she's not an
16 employee of the company any longer. She actually left the
17 company in 2019.

18 What she had -- currently, she is a paraprofessional at an
19 elementary school in Rising Sun, Indiana. She is a mom. She
20 has young kids: Four, seven, and 11. During the time that was
21 involved here, she had two very young kids at home back in
22 April of 2018.

23 She enjoys working with children at her job at the
24 elementary school, and in particular, she works with kids with
25 special needs because she has a personal interest in that. You

1 will also hear from Ms. Petty that she comes from a diverse
2 family. Her own family is diverse.

3 Her brother-in-law is African-American. Her nephew and her
4 niece are biracial. You will hear from Ms. Petty that she
5 doesn't think about people using race classifications, and you
6 heard from Mr. Imm that there were some discussion about
7 whether Ms. Petty was conscious of the fact that Mr. Lange,
8 what his race was. Well, she will explain to you that she
9 doesn't think about those types of things because her own
10 family is multiracial.

11 As I mentioned, Ms. Petty formerly worked at Anchor Glass.
12 She first started in 2011 as a clerk in the accounting
13 department. She then moved to the HR specialist role in 2014.
14 In that role, she basically did administrative work for the HR
15 manager. She was not involved in hiring. She was not involved
16 in interviewing. She didn't review job applications. That was
17 all handled by the HR manager.

18 However, when Ms. McMahon left in 2017, Ms. Petty had to
19 cover some of Ms. McMahon's duties as the HR manager. The
20 company was still doing -- still under a hiring freeze at that
21 time. So she wasn't doing any hiring of selector/packers, but
22 it was an extremely busy time for Ms. Petty. Not only was she
23 doing now two jobs, but she also had very young kids at home.
24 And she couldn't -- she had other obligations outside of work.
25 It was an extremely busy time.

1 By the spring of 2018, the company allowed Ms. Petty, after
2 this hiring freeze, to hire selector/packers, new
3 selector/packers to replace people who had left. Several
4 selector/packer positions had come open, and she was authorized
5 by HR in Tampa to fill those positions. Three positions had
6 come open over the previous prior months, and so she was
7 allowed to hire three people.

8 She did that by contact -- the first thing she did was get
9 applications. She contacted the local unemployment agency,
10 WorkOne, which collects applications. They gathered
11 applications, had people fill out applications for Anchor
12 Glass, and forwarded them on to her. They forwarded her ten
13 applications.

14 Now, as Mr. Imm noted, this is a good job. These are good
15 jobs at Anchor Glass. It's a unionized facility. The pay is
16 good. The benefits are good. It's not uncommon for current
17 employees to come forward and say, hey, I hear you're hiring,
18 you know, are you interested in a friend of mine or a relative
19 of mine? And that happened in this case, too.

20 There was a manager who came forward, I believe it was Liam
21 Curtin, who brought a resumé to Ms. Petty, and it was made for
22 a gentleman named Matt Holmes. And he was, therefore, included
23 with the applicants. So Ms. Petty had now ten applicants
24 altogether, ten applications from WorkOne, plus the resumé.

25 In addition, Mr. Lange's brother came to Ms. Petty and

1 asked about whether his brother should apply, whether the
2 Plaintiff should apply. He wondered if his conviction would
3 disqualify him. Ms. Petty said, no, have him apply. She
4 wanted everyone to apply.

5 Ms. Couch, if you could please pull up Exhibit 264. This
6 is a list of the 11 people who applied for the three open
7 positions in 2018: Ethan Harp, Matt Holmes, Christopher
8 Johnson, Dennis Casto, Christopher Henson, Cory Lange, Jeff
9 Muncy, Bonnie Vice, Angelina Welz, Travis Wilson, and Matthew
10 Wright.

11 Ms. Petty was thus faced with the question of how do I
12 choose out of these 11? How do I choose the three who are best
13 qualified? You can see it on this chart. The three who are
14 shaded green are the people who were ultimately hired, and
15 those shaded red were the ones who were not hired.

16 Ms. Petty looked at their skills, their job history, and
17 thought about whether they had an ability to move upward in the
18 future if they were hired. She also considered red flags,
19 dishonesty in the application, any prior employment with the
20 company that had not ended favorably. She also did consider
21 criminal convictions and whether the individuals indicated that
22 they had moved on, had made a change in their life from
23 whatever criminal convictions they might have in their past.

24 Ms. Petty also organized panel interviews. She had
25 production managers and supervisors from the plant from the

1 different areas interview each of the applicants -- well, all
2 of the applicants but one. There was an applicant named Bonnie
3 Vice. She's number eight on this list. She was not given --
4 she was not given an interview.

5 And, Ms. Couch, if you could please pull up Exhibit 255.

6 This is what the applications look like, and this was
7 Bonnie Vice's application. It's a little bit difficult to
8 read. I'm sorry about that.

9 But, Ms. Couch, if you could please focus on the box down
10 below that that asks the question, "Have you ever been employed
11 by the company?"

12 And it's right just below the middle of the page is the
13 question, "Have you ever been employed, or have you ever been
14 employed by Anchor Glass? Ms. Vice checked yes, and she noted
15 she had been employed from 1997 through 2004. Ms. Petty
16 decided not to include her in the interviews, and she was the
17 only person out of those 11 who was excluded from the interview
18 process.

19 She wasn't, however, the only person who had previously
20 worked for Anchor Glass out of the 11. You've already heard
21 that, in fact, Mr. Lange had worked for the company in 2004.

22 Ms. Couch, if you could please call up Exhibit 2000 -- or
23 209.

24 This is Mr. Lange's offer of employment from 2004. You can
25 see his signature there, and it's dated January 9th, 2004, and

1 it's signed by Mike Whiting, who was the human resources
2 manager there. It tells Mr. Lange that he's being offered
3 employment. It's only contingent upon his successfully
4 completing a post-offer physical and drug screen.

5 Ms. Couch, could you please call up 214, and move to the
6 second page, please.

7 This is the HR system at Anchor Glass.

8 If you could please -- sorry. Thank you. Oh, there you
9 go. Is there a second page? Okay.

10 So this shows that Mr. Lange was previously employed in
11 January of 2004, and his employment lasted for about 11 days.
12 His employment was terminated -- the records show that he
13 failed his probationary period back in 2004.

14 Ms. Couch, could you please pull up Exhibit 314.

15 This is Mr. Lange's application from 2018. And as you can
16 see where it asks, have you ever been employed by Anchor Glass,
17 he checked no, even though he had, in fact, previously worked
18 for the company and failed his probationary period in 2004.

19 Thank you. We no longer need that exhibit. Thank you.

20 After receiving the applications, Ms. Petty organized the
21 panel interviews, and Ms. Petty did, in fact, participate in a
22 number of those interviews, and you will see some of her own
23 notes from those interviews in the coming days. She is now
24 down to ten applicants, and over the following days they
25 conducted interviews. They typically lasted about 30 minutes

1 or longer, and after each of the interviews Ms. Petty and
2 whoever the production managers were with her would talk about,
3 well, what do you think of this person? Yes or no? Thumbs up
4 or thumbs down?

5 Ms. Petty was unable to participate in a couple of
6 interviews. She had a conflict, a scheduling conflict that
7 involved employee training. One of those that she couldn't
8 participate in was Mr. Lange's. So after she had completed
9 seven or eight of the interviews herself that she sat in on,
10 she and the production managers felt that there were probably
11 three people that they were leaning towards, and she certainly
12 felt that there were three people she was leaning towards:
13 Mr. Johnson, Mr. Harp, and Mr. Holmes.

14 Mr. Johnson had maintenance and warehouse experience,
15 including welding. Mr. Harp had warehouse experience and
16 vocational training, and Mr. Holmes was actually seeking a
17 bachelor's degree at the time. Ms. Petty felt that each of
18 these individuals had skills that suggested they would be able
19 to move up out of the selector/packer position, perhaps into
20 maintenance, perhaps into management.

21 There had also been no red flags in any of those three
22 individuals' applications or interviews. Their interviews had
23 gone well. There was no inaccurate information that had been
24 discovered in their applications. No issue -- no prior
25 employment with the company.

1 One of the production managers did ask Ms. Petty to follow
2 up with Mr. Lange. The committee that interviewed him did like
3 him. They thought he was interesting, and so one of the
4 managers asked Ms. Petty, said, "Hey, give him a call, and see
5 what you think, as well." So she did. Ms. Petty agreed to do
6 that.

7 That interview happened sometime towards the end of March
8 of 2018. She called up Mr. Lange, and she went through the
9 same kinds of questions that she normally asked the other
10 applicants when she was present. She talked about their work
11 history. She also talked about the swing shift, because that's
12 a big issue for some people. It can really change your life,
13 and in the course of discussing the swing shift with Mr. Lange,
14 he actually mentioned, "Oh, I'm familiar with it because I
15 worked here before." Well, that was news to her because he
16 checked no on the application.

17 THE COURT: Counsel, you have just a little over two
18 minutes.

19 MR. MURRAY: Thank you, Your Honor.

20 After that discussion, after the phone call, she went
21 and looked at the HR system and saw the record of employment,
22 and that he had only lasted 11 days back in 2004. That caused
23 her concern. She also discussed with him, as I mentioned
24 earlier, the criminal conviction he had, and he made this
25 comment that didn't sit well with her and suggested, called

1 into question whether he was truly remorseful for what he had
2 done. Maybe he was joking, but for whatever reason, it was a
3 red flag for her.

4 After conducting that interview, she talked to Travis
5 Ross, who was the plant manager. She discussed with him a
6 little bit about, you know, she was having -- she was trying to
7 decide what to do with these applicants, with the applications,
8 and Mr. Ross told her she should exercise her discretion and go
9 ahead and make the decisions that she thought were best, and
10 that's what she did. She chose three people that she thought
11 were going to be the most successful applicants at the company.

12 On April 3rd, Ms. Petty sent out e-mails, not only to
13 Mr. Lange, but to all of the other applicants who were not
14 successful, letting them know that the company was moving in a
15 different direction. That same day, she started -- she
16 requested the background checks for the three successful
17 applicants so that they could go ahead and start their process
18 of onboarding.

19 At the end of this process, Ms. Petty had spent about
20 a month reviewing applications, conducting interviews, trying
21 to find the best person for the job. She selected the three
22 people she thought were best, the people who didn't have any
23 problems in their background, and who had the best skills that
24 the company was looking for. Mr. Lange just turned out not to
25 be one of the three top choices. He was one of the eight

1 people who unfortunately was disappointed to find out that they
2 hadn't been successful.

3 We ask this Court -- or we ask the jury please to
4 enter a verdict in favor of Anchor Glass on Mr. Lange's claims
5 of discrimination. Thank you.

6 THE COURT: All right. Thank you, Counsel.

7 All right, Ladies and Gentlemen of the Jury, I'm going
8 to send you home for the evening, and I'm going to give you an
9 admonishment. During this period of time that you are allowed
10 to separate for overnight, the Court admonishes you that you
11 must not have any discussion about the case among yourselves or
12 with anyone else.

13 What that means is when you get home and you tell your
14 family, "I'm so lucky, I'm on a jury. I'm on jury duty," and
15 they're going to say, "What's your trial about?" You may not
16 tell them. The reason being that if you begin to discuss it
17 with your family and friends, you will begin to form and
18 express opinions about the case, and you're not allowed to do
19 that until you've heard all of -- you haven't heard any
20 evidence so far. You've just heard the opening statements of
21 counsel, but you're not allowed to have any discussions or make
22 any decisions until you've heard all of the testimony and
23 evidence from the witness stand, you've received the final
24 instructions from the Court, and you've heard the closing
25 arguments of counsel, and you're back in your jury room

1 deliberating.

2 So I know it's common. It's nature to want to talk about
3 things, but once the trial is over, you can talk about it as
4 much as you would like. You may not read or watch anything
5 about this matter, and you may not research anything about this
6 matter on -- in any newspapers, television, radio, or Internet.
7 So, Ladies and Gentlemen, that means don't do any Googling
8 about any of the witnesses, the parties, the attorneys, the
9 Anchor Glass corporation, none of that, because once the case
10 is over, you are allowed to do that, but until that time, no
11 research about anything related to the case. You will receive,
12 as evidence, everything that you need to know about the case,
13 and you'll get that here in the courtroom.

14 If anyone should attempt to talk to you about the matter,
15 refuse and report that attempt to your bailiff at your earliest
16 opportunity. Under this admonishment you are excused for
17 overnight, and we need you in your jury room at 8:45 a.m.

18 Traffic is always a mess, especially if you're going to get
19 on the interstate, so please leave in plenty of time so that
20 you can be in your jury room at 8:45, because we definitely
21 want to finish by Friday so that you can all have a happy Labor
22 Day without fooling about thinking about coming back here on
23 Tuesday; okay?

24 All right. Have a very good evening.

25 COURTROOM DEPUTY: All rise.

1 (Jury out at 5:09.)

2 THE COURT: All right. You may be seated. And,
3 lawyers, the courtroom will be open by 8:00 a.m., and we need
4 you all here by 8:15, okay, in case there's anything we need to
5 talk about before we present with the jury. That includes you,
6 all right, Mr. Lange? You get here at 8:15 with your lawyers.

7 Can we get your order of proof for the morning so we
8 know which witnesses you're going to call?

9 MR. IMM: Yes, Your Honor. The first witness will be
10 Katie Petty. The second witness -- the second witness is going
11 to be Mr. Gosmeyer.

12 THE REPORTER: I'm sorry, I couldn't hear you. Is
13 your microphone on?

14 MR. IMM: Oh, I'm sorry.

15 THE REPORTER: Thank you.

16 MR. IMM: The second witness will be Mr. Gosmeyer.
17 The third, Brad Lange; the fourth, Travis Ross; the fifth,
18 Terron Gregg. And if we still have time, Cory Lange.

19 THE COURT: Okay. All right. Have a good evening,
20 everyone, and we'll have the courtroom open for you by
21 8:00 a.m., but make sure you're here at 8:15. Have a good
22 evening.

23 MR. IMM: Thank you, Judge.

24 COURTROOM DEPUTY: All rise.

25 (Proceedings adjourned at 5:11 p.m.)

CERTIFICATE OF COURT REPORTER

I, David W. Moxley, hereby certify that the foregoing is a true and correct transcript from reported proceedings in the above-entitled matter.

/S/ David W. Moxley September 25, 2024
DAVID W. MOXLEY, RMR/CRR/CMRS
Official Court Reporter
Southern District of Indiana
Indianapolis Division